

### **REMARKS/ARGUMENTS**

Claims 2-14, 40-42, 44-56, 82-88 and 171-184 are pending in the application and stand rejected. Reconsideration of the claims is respectfully requested.

Claim 171 is amended to correct a claim dependency, “172” is changed to –44–. No new matter is added, as it is taught throughout the specification that the composite can be laminated.

#### **Double Patenting**

The obviousness-type double patenting rejections over claims 1-25, 47-60 of copending application Domine et al. (U.S. Publication No. 2004/0076846; hereafter “Domine”) and claims 1-42, 64-81 of copending application Domine et al. (U.S. Publication No. 2004/0161623; hereafter “Domine”) are held in abeyance until allowable subject matter has been identified. Both of these cases have been abandoned in favor of continuation applications.

However, the Applicants would like to point out the just-issued patent U.S.S.N. 11/141,306, which claims priority to U.S.S.N. 10/469,072, now abandoned.

#### **35 U.S.C. §103(a) - Obviousness**

Claims 2-14, 40-42, 44-56, 82-88, 171-184 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Domine et al. (WO 02/078953; hereafter “Domine”) in view of Iovine et al. (U.S. Patent No. 4,948,822; hereafter “Iovine”) or Kojima et al. (U.S. Patent No. 4,654,255; hereafter “Kojima”). The Applicants traverse.

*Domine* is directed to laminates including an  $\alpha$ -olefin polymer and/or acid polymer as a tie layer. As admitted by the Examiner, *Domine* does not disclose the

polymer including an amine-containing monomer or epoxy-containing monomer. The Examiner combines *Iovine* and, separately, *Kojima* for this latter disclosure.

There is no motivation for one skilled in the art to combine the above references. *Iovine* is directed to solving the problem of having organic solvents in adhesive compositions by producing an aqueous emulsion adhesive.<sup>1</sup> This problem is further solved by forming a “core-shell” emulsion wherein the “core” of the polymer particles include a functional comonomer that is latently reactive with another type of functional monomer in the “shell” layer.<sup>2</sup> The latently reactive components then react once the aqueous emulsion is applied (not laminated) to the substrate.<sup>3</sup> The *Iovine* disclosure is largely directed at the synthesis of this “core-shell” emulsion.

The Supreme Court in *KSR* stated that it must be asked “whether the improvement is more than the predictable use of prior art elements according to their established functions.”<sup>4</sup> The use of the “core-shell” composition in the claimed “laminated” compositions would not have been predictable, since in the current invention the materials are laminated, which necessarily entails heating and mixing. If the “core-shell” composition of *Iovine* were used in place of Applicant’s “a (co)extrudable tie resin”,<sup>5</sup> there would have been a problem first in the water that is necessarily a part of *Iovine*’s aqueous emulsion, and second, a reaction between the core and shell layers that would occur prior to lamination (during melt-blending in an extruder to co-extrude with the substrate), thus negating it’s adhesive qualities. Thus, the “established function” of the *Iovine* adhesive is distinct from what is required in Applicant’s claims.

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<sup>1</sup> *Iovine*, col. 1, lines 45-52.

<sup>2</sup> *Id.* at col. 3, lines 20-30.

<sup>3</sup> *Id.* at col. 6, lines 23-35.

<sup>4</sup> *KSR International v. Teleflex Inc.*, 127 S.Ct. 1727 (2007).

<sup>5</sup> Current Application, independent claims, full quote “a (co)extrudable tie resin (CTR), wherein the CTR comprises a copolymer of one or more C<sub>2</sub>-C<sub>10</sub>  $\alpha$ -olefins and one or more ethylenically copolymerizable amine-containing monomers”.

The Applicants thus request that this rejection over *Domine* in view of *Iovine* be withdrawn.

As to the use of *Kojima*, one skilled in the art would also not combine this with *Domine* due to a similar rationale as with *Iovine*. *Kojima* is solving the problem of improving the adhesive bonding between dissimilar materials, but solves the problem quite differently than the Applicants. *Kojima*'s solution is a two-part composition, each part being reactive with the other, that is applied to the surface as a solution or powder to effectuate adhesion.<sup>6</sup> Thus, the "established function" of the *Kojima* adhesive is distinct from what is required in Applicant's claims, as forming a laminate of the *Kojima* adhesive would cause pre-reaction before it is brought into contact with the surface to be adhered.

Key distinctions in the disclosures in both *Iovine* and *Kojima* are that the disclosed adhesive in those references are two-component materials that are made reactive by first applying to the surface to be adhered, followed by activation of the adhesive to cause adhesion. This is contrary to a laminate process, which creates a melt of the Applicant's tie-layer, that melt then adhering to the two surfaces to be joined as by the natural cohesive properties of the melts with one another. The two-step process of creating a melt followed by co-extrusion is contrary to the teaching of having an adhesive that is applied to a surface and then subsequently activating (causing a reaction within) the adhesive so that it then acts in its intended manner.

In particular, the Applicants point out that all the claims 171-182 are articles "formed by the method of", one step being the lamination process. Neither *Iovine* or *Kojima* disclose this process.

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<sup>6</sup> *Kojima*, col. 8, lines 35-45.

The Applicants thus request that this rejection over *Domine* in view of *Kojima* be withdrawn.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated, since this should expedite the prosecution of the application for all concerned. If necessary to affect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to affect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1712 (Docket No. 2003B050A).

Respectfully submitted,

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